

MINUTES

INSOLVENCY LAW COMMITTEE OF THE BUSINESS LAW SECTION OF THE STATE BAR OF CALIFORNIA

April 23, 2004

The regularly scheduled meeting of the Insolvency Law Committee of the Business Law Section of the State Bar of California was held on April 23, 2004, at the offices of Procopio, Cory, Hargreaves & Savitch in San Diego, California and by video conference at Reed, Smith, Crosby, Heafey in Los Angeles.

The following members attended the meeting in person, by video conference or by telephone:

Geraldine Valdez
Peter Bronson
Paul Pascuzzi
Radmila Fulton
Molly Baier
Elizabeth Berke-Dreyfuss
Lynn Ernce
Lisa Fenning
Bob Franklin
Judy Gibbs
Michael Koch
Howard Kollitz
Donna Parkinson
Mark Porter
Dan Schechter
David Shemano
Cliff Stevens
Colin Wied
Russell Clementson (Ex Officio)
Rob Harris (Ex Com Liason)

The following members did not attend the meeting: David Bertenthal, Mike Buckley, Eve Karasik, Greg Lunt, Tracy Schweitzer, and Sandy Lavigna (Ex Officio).

Geraldine Valdez called the meeting to order at approximately 10:00 a.m.

1. Approval of Minutes: February 19, 2004.

The minutes of the February 19, 2004 meeting were approved.

2. Membership.

Geraldine reminded the Committee that it is time to be recruiting new members for next year. She will send an e-blast encouraging lawyers to join.

3. Meeting Schedule.

No change in the meeting schedule for the balance of the year.

4. Budget.

Rob Harris noted that the Committee is doing well on its budget. Geraldine reported that she has not submitted all of the video conference billings yet, but that the Committee should still be within budget.

5. Subcommittee—Assignments.

Nothing to report at this meeting.

6. Programs and Education Subcommittee Report.

Radmilla Fulton and Rob Harris reported that the Committee was granted permission to put on two programs at the October 2004 Annual Meeting. The two programs will be Mark Porter's program on asset sales under Bankruptcy Code Section 363 and Russell Clementson's program on bankruptcy fraud. The Committee discussed the preferred panelists for the fraud program. Mark and Russ will be working to select the panelists and the program materials. The Committee also discussed potential topics for next year's winter program, such as airline pension, taxes and nondischargability issues.

7. Website Report and Constituency Outreach Project and Report from Constituency/Outreach/Website Subcommittee.

Bob Franklin reported for the website, et al. subcommittee. Geraldine noted that the Committee was asked to put together a short statement advertising its website for publication in the Business Law News. Bob noted that any changes to the website can be submitted on the second week of each month. The Committee is continuing its ongoing efforts to solicit emails for e-blast lists. Paul Pascuzzi is to check with the California Bankruptcy Forum to see if it will share its email list for each local forum. The Committee also discussed "tele-seminars" whereby a panel presents a seminar and attendees can attend by phone and call in questions to the panel. Liz Berke-Dreyfuss has participated in "tele-seminars" and it worked well. Liz will look into the mechanics of how they work and the cost.

8. Progress Reports on Current Projects from Legislation Subcommittee.

A. Badges of Fraud ALP Status. Dan Schechter reported that the bill to insert the common law badges of fraud back into the statute (SB 1408) passed in the

Senate and is now on its way to the assembly. Dan and Judy Gibbs will continue to monitor the progress of the bill.

B. New Projects.

i. Model Real Estate Order and Findings. The revisions to the findings and order that Geraldine suggested and that were suggested by Robert Collins of the Panattoni Law Firm were made by Paul Pascuzzi. We also received comments from Judge Montali from the Northern District at a recent seminar. The Committee discussed the comments and determined how to revise other order and findings based on the comments. Paul is to revise the order and findings accordingly and forward them to Geraldine. Geraldine will have them reviewed by her real estate contacts.

ii. CCP §§ 697.530 and 708.110 et seq. These projects deal with the problems of perfecting a California judgment lien against a foreign corporation and secret liens. Peter Bronson is continuing to explore whether other State Bar committees, such as the UCC Committee or the Litigation Committee, might be interested in these issues. The project is likely to be either an issue of identifying and fixing problems with the statutes or educating the bar about these provisions. The Committee discussed having a registration location for the secret liens as an option to fix the problems.

iii. H.R. 975 (Bankruptcy Reform Act). Nothing new to report. The bill is not dead, but it is not moving either.

9. Publications Subcommittee Current Projects Report.

David Shemano reported that Dan Schechter's article will appear in the next issue of the Business Law News. The Committee discussed topics for the mandatory article for the summer issue of the Business Law News (draft due by June 1, 2004). Volunteers for the article and the topics are as follows: Geraldine Valdez, the model real estate order and findings; and Peter Bronson, secret liens. Geraldine will work on the mandatory California Legislative Bulletin Annual Report.

10. Legislation Subcommittee's New Bill Report.

A. State Bills.

Geraldine led the discussion of and reported on AB 3103 regarding attorney's liens. Geraldine will circulate the questions from Saul Bercovitch of Larry Doyle's office regarding the bill for each Committee member to address.

B. CLRC.

With regard to the California Law Review Commission survey on the uses of the assignment for benefit of creditors provisions, Geraldine will send the survey out in an e-blast. Mark Porter will find out where the responses should be sent, hopefully by email, to make it easy to respond. Regarding the CLRC memo discussing proposed revisions to the mechanics lien law, Mike Koch reviewed the memo and materials and reported that no specific changes to the model act had been proposed yet. Mike is to continue to monitor the project and report to the Committee.

C. Federal Bills.

Regarding the proposed revisions to avoidance law in SB 1970 and SB 832, Mark Porter, Paul Pascuzzi, and Sandy Lavigna are working to analyze the two bills and report on them. The general purpose of the bills appears to be aimed at the avoidance of payments of excessive compensation to insiders. However, whether the proposed revisions to the Bankruptcy Code are necessary or appropriate to achieve that goal needs to be examined. Mark suggested, and the Committee agreed, that a lawyer with expertise in executive compensation, securities laws, and Sarbanes Oxley be consulted. Mark will follow up.

Geraldine reported no further change in status on SB 1264 and SB 1331. Regarding the revisions to the Federal Rules of Bankruptcy Procedure, the deadline for comments has passed, so this matter will be taken off the agenda.

D. State Bulk Sales Laws.

At the prior meeting, the Committee voted to join in the UCC Committee's report recommending the repeal of the bulk sales laws. Geraldine Valdez will continue working with the chair of the UCC Committee to determine the best manner in which to indicate the ILC's support.

11. Update from Ex-Comm Liason.

Rob Harris gave the report from Ex-Comm. Rob noted that he needs the member matrix memo updated and reviewed (pages 18-19 of the materials). New member applications will be sent in time for the next meeting materials. Formal officer votes for next year are due by June 1. Geraldine, Peter and Paul will discuss nominations. Also, Geraldine asked the Committee to think about subcommittee chairs for next year. Radmilla Fulton's term is up this year, so the Programs and Education Subcommittee will need a new chair. Any other subcommittee chairs that do not want to continue serving need to notify Geraldine. Rob noted that the use of list serves is tracked and reported. Rob also noted that subcommittee list serves can be set up if desired. Rob encouraged the Committee to solicit new Committee members now, since earlier applicants receive priority consideration if oversubscribed. Rob asked if the Committee plans any new affirmative legislative proposals. Geraldine noted that the badges of fraud ALP was the latest ALP. Rob explained the coming changes to the Programs and Publications Committee. Rob asked for any concerns of our Committee that should be expressed to Ex-Comm. It was noted that the deadlines for programs need to be clearer and set earlier.

12. New Business.

A. Ethics Alert Article.

Rob discussed his recent article on the Sarbanes-Oxley issues of noisy withdrawal and how they can affect insolvency counsel. If anyone has any comments on the article, please get them to Rob.

B. Resolutions of Conference of Delegates.

Mike Koch will review these to see if there are any issues relevant to insolvency.

C. Judicial Counsel Invitations to Comment.

Geraldine reported that there was nothing relevant to our Committee to consider.

D. Corporations Committee Comment on AB 2752.

Judy Gibbs volunteered to review the comment to determine whether there are any issues that are relevant to insolvency.

13. Adjournment. The meeting was adjourned at approximately 12:10 p.m.

Respectfully submitted,
Paul Pascuzzi